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Business and Labor Committee
January 23, 2012

[LB791 LB846 LB866 LB911]

The Committee on Business and Labor met at 1:30 p.m. on Monday, January 23, 2012, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB846, LB791, LB866, and LB911. Senators present: Steve Lathrop, Chairperson; Tanya Cook, Vice Chairperson; Brad Ashford; Tom Carlson; Burke Harr; Jim Smith; and Norm Wallman. Senators absent: None.

SENATOR LATHROP: (Recorder malfunction)...are timed or subject to the light system. Once the bill has been introduced then the proponents, or those people who favor the bill, will come forward. We want you to make sure that you've signed a sign-in sheet and share that with Laurie, then testify. We want you to say your name, spell your last name, and then you'll have three minutes. You'll get a green light for two minutes, a yellow light for a minute, and then the red light comes on. Please don't make me interrupt you. When you get the red light, please respect that in order to keep the hearings moving the red light means that you have to, you know, basically finish your sentence or your thought and so that we allow everybody an opportunity to be heard. After the proponents have been heard then the opponents will step forward and speak and give us the reasons for their opposition in the same manner and subject to the same rules. And then those who want to testify in a neutral capacity will be heard, and the senator will then be permitted to close on his or her bill, as they choose. Lights. Let me introduce everybody here for the folks here today. I'm joined today by Senator Carlson to my furthest right; Senator Burke Harr; Senator Tanya Cook; we have Laurie Vollertsen who we're borrowing from our friends over at Retirement--Kate is going to be taking a little leave; and Molly Burton, committee counsel. And with that, we'll start with LB846 and Senator Sullivan. Welcome, Senator, to the Business and Labor Committee.

SENATOR SULLIVAN: Thank you, Senator. I think this is my first time here. [LB846]

SENATOR LATHROP: I think it is. [LB846]

SENATOR SULLIVAN: (Exhibit 1) Good afternoon, Senator and members of the Business and Labor Committee. I am Senator Kate Sullivan, that's K-a-t-e S-u-l-l-i-v-a-n, representing the 41st Legislative District. I come before you today to introduce LB846. LB846 requires an employer to have current emergency contact information on file for their employees. It requires an employer or an employer's representative to make a reasonable effort to reach an employee's primary or secondary contact person when an employee is injured on the job and the injury requires treatment at a medical facility. The effort to reach the employee's primary or secondary emergency contact person to notify them of the employee's injury should take place after 911 has been called or while en route to a medical facility if 911 has not been called. Now I know this seems like common sense. I also know that most employers, regardless of size, already maintain this information on their employees. I know that we do in the small business that we

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have, and I wouldn't think of not notifying someone if one of our employees was injured while at work. I have this information on my legislative staff and I venture to guess that most of you do as well. If all employers followed this practice, I wouldn't be here today with LB846. It comes from the personal experience of a constituent who was seriously injured on the job and transported to a local facility. The employer did not contact the family. Once the constituent arrived at the hospital, the hospital staff contacted the family. The family lived more than a half-hour's drive from the hospital. By the time the family arrived at the hospital, they were able to spend five minutes with their husband and father before he was "life-flighted" to an Omaha hospital. The family made the three-hour trip to Omaha, only to be told that their loved one had passed away while they were on the road. The person, the wife of this individual, was to be here to testify today. She lives up in northeast Nebraska and the roads were such and the weather was such that she was not able to be here. I do have her testimony and I'd like that passed out right now. Granted, it's a very personal story for her and in some cases quite emotional for her to write. And I think you'll find that when you read her testimony that she speaks from the heart and not out of vindictiveness at all but simply hoping that not another family will have to go through what she did. And granted, I want to be clear that had the employer contacted the family immediately, their loved one would not have survived. His injuries were severe. That's not the point here. But the lack of a phone call robbed the family of an hour they could have spent with their loved one, the last hour in fact they would have spent with him, an hour that they didn't get, time that they can never recover. This tragedy profoundly affected my constituents, his family and friends and no doubt his employer and his coworkers. When an employee is injured on the job, I believe the employer has a moral duty to make an effort to notify the employee's emergency contact person. LB846 would make that a statutory responsibility. I've been asked whether LB846 creates a liability for employers. Well, I want you to know that's certainly not my intent and that's why, if you read the bill, the term "reasonable effort" is mentioned. You call the primary contact. If you don't reach the primary contact then you call the secondary contact. And even if you don't reach the secondary contact, you have fulfilled your obligation under LB846. You've made that reasonable effort. If the employer in my case had placed one phone call, they would have reached the family. LB846 requires that reasonable effort to make contact. I know, as you I'm sure do as well, that we can't legislate common sense, but we can certainly guide our citizens down the right path. LB846 provides guidance to employers. I thank you for your time, your interest, and your consideration. [LB846]

SENATOR LATHROP: Very good. Thanks, Senator, for that introduction. Are there any questions for Senator Sullivan? Senator Carlson. [LB846]

SENATOR CARLSON: Thank you, Senator Lathrop. Are you going to be here to close? [LB846]

SENATOR SULLIVAN: Yes. [LB846]

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SENATOR CARLSON: Okay. I'll wait and see if I ask questions of some of the testifiers. [LB846]

SENATOR SULLIVAN: Sure. Sure. [LB846]

SENATOR CARLSON: Okay. [LB846]

SENATOR LATHROP: I see no other questions. [LB846]

SENATOR SULLIVAN: Thank you. [LB846]

SENATOR LATHROP: All right. We'll take the first proponent of LB846. Doesn't look like there's a proponent. We will make the testimony of Penny Voborny of Elgin part of the record today and recognize that this would have been her testimony had she been here and her story, and we appreciate you distributing that to the committee. Is there anyone here in opposition to LB846? Seeing none, how about anyone here in a neutral capacity? [LB846]

RON SEDLACEK: Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Ron Sedlacek, that's R-o-n S-e-d-l-a-c-e-k, and I represent today the Nebraska Chamber of Commerce and just would like to provide a bit of comment in regard to LB846 in a neutral capacity. We understand the intent of the legislation and certainly among the membership that we had talked with in reviewing the legislation, most do maintain this type of information. However, there are some compliance issues that should be raised and that if you were ever to go forward with this legislation they probably should be addressed. And there should be potentially a provision also in regard to if there is failure for some reason to comply what would if any liability there would be upon that employer or not...in the sense of not necessarily just refusing to maintain the list but, as an example, you're to give the telephone number, is that home, cell, business, all of them, how often do you maintain it? Who's responsible to inform the employer if there's a change? Does the employer have to, you know, inquire from time to time or is doing it once at the time that you're engaged as an employee, you give that information and then it just sits there in the file unattended? So that's one issue. Second issue is this really works well in a shop that's 9:00 to 5:00 and all the personnel come in and go home or whatever the working hours might be. However, if you are in a situation let's say where you may be an employer outside of the state and you have five or six employees who are sales people that work within Nebraska and let's say they're going to a sales call overnight and they get into a traffic accident someplace. The employer doesn't know about it. Certainly I know there's a reasonable effort here but when they finally find out, you know, perhaps the employer...employee was injured in a traffic accident, so the question becomes then should they continue to make a reasonable effort even if the person did go to the

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hospital and maybe was dismissed? You know, that's another issue. The third is...issue is in regard to primary contact and secondary contact. If you can't obtain a secondary one, what do you do? If an employee refuses to give you any contact whatsoever and just says, I don't have any and I don't want to give you any, then how do you comply? So essentially those are the issues that we have some concerns about and that's the workability. Particularly, as I say, when you do have a situation where you may have employees spread out or perhaps you've closed shop and you have a security guard and the security guard injures himself at work, cuts himself, calls 911, goes to the hospital, you may not know about that until the next day. On the other hand, you may have, you know, various types of...you may not have that personnel office open for all shifts as well and then the question is who gets...who has access to the records?
[LB846]

SENATOR LATHROP: Okay. Very good. Do I understand that you don't have an opposition to the underlying principle? [LB846]

RON SEDLACEK: The underlying principle is solid, yes. [LB846]

SENATOR LATHROP: You just want to clarify some of those details. [LB846]

RON SEDLACEK: Uh-huh. [LB846]

SENATOR LATHROP: Okay. Very good. [LB846]

RON SEDLACEK: It would be a good business practice but the way it is drafted at this point we would have problems. [LB846]

SENATOR LATHROP: Okay. Any questions? Senator Carlson. [LB846]

SENATOR CARLSON: Thank you, Senator Lathrop. Ron, in the things you've talked about, you made the statement, just your last statement was it would be a good business practice, and I think it would be too. The question is whether it ought to be mandatory or voluntary. Do you have any feelings one way or the other on that?
[LB846]

RON SEDLACEK: Well, Senator Carlson, we would prefer that it would be on a voluntary basis and that it would be good practice. However, I've not really seen legislation introduced that says an employer may or may not do this, you know, but recommend that they do that. So it's kind of an all or nothing, as a general rule. [LB846]

SENATOR CARLSON: Well, I think sometimes there's a value in something coming forward as a bill because it gets us all thinking about what would be proper and what, as employers, employers should be doing without making it mandatory. I have a concern

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about a bill that...not that it's brought forward, I don't blame Senator Sullivan at all for bringing something forward, but when we make legislation that's really based on one incident or one instance I think we've got to be careful for that. We did that in Natural Resources one time and then we ended up with about eight hours on the floor trying to undo what we'd done. And so I don't want that. The other thing, do you have any comment about this information, it could be out of date, so you've mentioned that. It could also be false and an employee doesn't want the employer to know how to get a hold of them. That can happen. I think it does happen. So then the employer makes an attempt to reach, and it's impossible, come back at them that they either recorded it wrong or they didn't try hard enough. So that's...do you have any comment about that possibility? [LB846]

RON SEDLACEK: Yes, Senator, and that's why if anything you'd want to seek some clarification and some immunity from liability in those particular cases, which is not here in the bill, because there is a duty that's established. It's...although it's couched in "a reasonable effort," there still is a duty and that would be in the statutes. And if for some reason there was a deficiency in that duty, who's fault is it? And so that would be one clarification. I think that would certainly...and we'd know what the rules are but, for example, let's say you have a landscaping company that people mow lawns, trim trees and so forth, and they're out on a location and they're injured, they're taken to the hospital. You don't hear about it. It's not reported to you. Maybe it's a slight injury but nonetheless they're taken in for observation, for example, and you don't really find out anything until you get the first report of injury, you know, let's say under workers' comp, and it's like, oh gosh, I didn't contact, you know, didn't know about it. Of course, how do make a...you know, the reasonable effort is there. You didn't know. That certainly would be a defense. But we'd kind of like to have it spelled out. [LB846]

SENATOR CARLSON: Okay. Thank you. [LB846]

SENATOR LATHROP: All good points and we appreciate you coming here to make them today, Ron. [LB846]

RON SEDLACEK: Thank you. [LB846]

SENATOR LATHROP: That's all we have. Thanks. Bob. [LB846]

ROBERT HALLSTROM: Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business in a neutral capacity on LB846. Mr. Sedlacek has touched on a number of the points that I would have intended to. I think it is important in going through the bill, just some technical suggestions for the committee and Senator Sullivan. I don't think I disagree with anything that she said in terms of the fact that most businesses do this on a voluntary basis, already feel the duty or the obligation to call

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folks when there is an injury that they're aware of. But with respect to some technical issues, I think there may be an employees' rights issue here. In our shop, we have situations where the employee, for one reason or another, does not want to provide the information of any nature, so if, on line 2, if it were to provide "to the extent provided by the employee" or "if provided by the employee" would be helpful. In section (2)(a) some individual employees may not have a spouse or next of kin to designate so you might want to add "or other individual" in the primary contact person. I think the issue that Mr. Sedlacek pointed out with regard to injuries off premises or at a remote site, there should probably be some element of knowledge or awareness by the employer to trigger the duty to make these reasonable efforts. I think one other item that Mr. Sedlacek did not point out is, what if there is a lag between the time of injury and the transport to the medical facility? We don't provide any escape valve for that particular situation. I think it would be a good idea to have some element of liability immunity with regard to the reasonable efforts. Again, I think the issues of was the employer provided with the right information may be part of what reasonable efforts could be defined as. And I think that would take care of the issues that we would like to see the committee address and Senator Sullivan take into consideration if this bill is to move forward. [LB846]

SENATOR LATHROP: Okay. Thanks, Bob. Any questions of Mr. Hallstrom? [LB846]

ROBERT HALLSTROM: Thank you. [LB846]

SENATOR LATHROP: Seeing none, anyone else here in a neutral capacity? Seeing none, Senator Sullivan, you're next to close. [LB846]

SENATOR SULLIVAN: Thank you very much, Senator. Senator Carlson, your point is well taken. First of all, sometimes we introduce legislation and if nothing more is accomplished than to shed light on a concern or an issue, that's good. Is this an isolated instance? Well, I would venture to guess maybe all of us in some way have had an occurrence similar to this. I can distinctly remember the day I was sworn in as a senator and I invited a good friend to lunch after the swearing in. That evening she called me and her husband had an injury at work that afternoon and they called her and he died as a result of those injuries. So these things happen. We don't like to think that they do. And as I said, we'd like to think that this is common sense, but I'm just saying that perhaps there's reason enough to put this in statute. The beauty of these committee hearings is that we hear testimony that bring forward things that need to be clarified and worked out, and I want you to know that while I believe fully in LB846 I'm certainly open to any amendments that might be attached to it and willing to work with the committee. [LB846]

SENATOR LATHROP: Very good. Thank you, Senator Sullivan. Oh, Senator Carlson has a question for you. [LB846]

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SENATOR CARLSON: Thank you, Senator Lathrop. Two other thoughts that come to mind, and I guess I'm asking whether you would agree with this or not. But I think of a situation of a tree removal or some kind of a trimming business because that's fairly easy to picture, so the employer is not along. He sends two employees out to work and one of them gets hit by a dropping branch or a falling tree. What's the first, most important thing to happen after an occurrence like that? I think it's getting the proper help. [LB846]

SENATOR SULLIVAN: Exactly. [LB846]

SENATOR CARLSON: And so if there's two employees out there, the other one better get the help as fast as he or she can get it before even maybe notifying the employer... [LB846]

SENATOR SULLIVAN: Oh, absolutely. [LB846]

SENATOR CARLSON: ...and down the line would be, unfortunately, the list of identifying or calling, notifying family. So first thing is to get the proper help. [LB846]

SENATOR SULLIVAN: And I say that in my bill. [LB846]

SENATOR CARLSON: Okay. Then second thought is, what's the penalty for noncompliance? [LB846]

SENATOR SULLIVAN: According to this proposed legislation, none. It just opens up, as you have heard, the possibility for liability if in fact it is identified that the employer has not made reasonable effort. [LB846]

SENATOR CARLSON: And you defined reasonable effort. Give it to me again. [LB846]

SENATOR SULLIVAN: By making the primary contact...contacting the primary contact. If that contact is not successful, going to the secondary contact. If that's not successful, they've made their reasonable effort. [LB846]

SENATOR CARLSON: And if out on a job someplace other than the office where that information is located and nobody happens to be back in the office to answer the phone to get that, then what? [LB846]

SENATOR SULLIVAN: That's a good point. [LB846]

SENATOR CARLSON: These are all things that the prudent person should do and make every effort to do, but there will be times it doesn't work. [LB846]

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SENATOR SULLIVAN: And as I said, that's in part the beauty of this committee process where you hear testimony and questions just like yours that give us pause and wonder about details to be worked out. This is not foolproof. And can any piece of legislation cover all instances? I doubt it, but we try our best to cover as many as we can. [LB846]

SENATOR CARLSON: Yeah. And thank you. [LB846]

SENATOR SULLIVAN: Uh-huh. [LB846]

SENATOR LATHROP: (Exhibits 2-3) I see no other questions for you. I did have two other letters I should enter into the record. One is from the Hospital Association, who is...wrote a letter in opposition dated January 23, and a letter, Department of Administrative Services that is in neutral, in a neutral position, and that's a letter from that agency dated January 20. So those will be entered in the record as well as your constituent's letter. [LB846]

SENATOR SULLIVAN: Okay. [LB846]

SENATOR LATHROP: And that will close our hearing on LB846. [LB846]

SENATOR SULLIVAN: Thank you. [LB846]

SENATOR LATHROP: Thanks, Senator. Next up will be LB791. Is that right? Yeah, LB791. That brings us to Senator Mello. And before you introduce yourself, Senator, I will just remind everyone that sometimes you'll see the senators come and go from this committee. You'll notice Senator Smith isn't here right now. If we have to introduce one of our bills in another committee, senators will from time to time get up and leave, and that's not...shouldn't be interpreted as them being rude or disinterested but having other commitments and other responsibilities in different committees to their own bills. And with that, we'll open on LB791 and Senator Mello. [LB791]

SENATOR MELLO: (Exhibit 4) Good afternoon, Chairman Lathrop and members of the Business and Labor Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. While Nebraska has not experienced the unprecedented high levels of unemployment that many of our other states have seen, many Nebraska businesses have been negatively impacted and affected by the great recession the past few years and have been forced to lay off thousands of workers. Work sharing, also referred to as shared work or short-term compensation, is an option within the federal-state unemployment insurance system that provides businesses with a valuable tool to prevent layoffs in the case of temporary economic downturn. LB791 would adopt the Shared Work Unemployment Compensation Program, making Nebraska's the 25th work-sharing program in the

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United States. Since our current economic downturn began, six additional states have enacted work-sharing programs and work sharing has been recommended by the National Governors Association as a best practice for assisting workers in an economic downturn. LB791 creates a voluntary program under which employers can temporarily reduce the normal work hours of designated employees in lieu of temporary layoffs. For example, if a Nebraska business faced a 20 percent reduction in production, ordinary business practices might result in that business laying off about one-fifth of their work force. If the business chooses to adopt a work-sharing program under LB791, they could instead reduce employee hours by 20 percent, perhaps switching to a four-day work week, cutting production by the required 20 percent while retaining its total work force. Employees whose hours are reduced under a work-sharing plan would then be eligible for partial unemployment insurance benefits to offset their lost wages. While these benefits would not fully cover their lost income, they help mitigate the loss. Under LB791, an employer submits a written, shared work plan to the Department of Labor, which must be either approved or denied within 30 days. In order to be approved, the plan must meet certain minimum requirements which are laid out in Section 4 of the bill. These requirements include identifying which employees will be affected, at least 10 percent of the total employees, reducing hours for the affected employees for not less than 10 percent and not more than 40 percent, and providing that fringe benefits, as defined in the bill, will continue to be provided as though the employee work weeks had not been reduced. In addition, employers must certify that the work hour reductions are in lieu of layoffs; that they will not hire additional part-time or full-time employees while the work-sharing program is in operation; and that there had not been layoffs of more than 10 percent of total employees during the previous four months. Work sharing has generally shown to benefit both employers and employees in other states where similar legislation has been adopted. For employers, work sharing helps businesses to weather economic slowdowns while still retaining their skilled work force, eliminates future business expenses for recruiting, hiring, and training new employees, and helps sustain employee morale and productivity. Employees benefit from keeping their job rather than being unemployed and are able to retain their health insurance and retirement benefits. While the state could see additional administrative costs to administer this new program, these costs are federally funded and have no General Fund impact. Additionally, the state should benefit as well, as work sharing helps preserve jobs and maintain consumer spending during economic downturns and reduces the burden on Medicaid and other social service programs. Included in the materials I handed out to the committee is a recent Wall Street Journal article that highlights the successes in Rhode Island's work-sharing program. The state of Washington actually estimated that their work-sharing legislation helped save more than 25,000 jobs in 2009, and more than 30,000 jobs in 2010. I did receive a copy of the letter sent to the committee by Commissioner Lang taking a neutral position on LB791 and wanted to address a few statements in her letter. First, the fiscal estimates by the Department of Labor draw on our neighboring state of Missouri, which currently sees about 15 percent of their total unemployment claims under their shared-work program. The Department of Labor

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assumes that this would be...more or less translate into a 15 percent increase in unemployment claims in Nebraska and fails to account for the fact that recipients of the partial shared-work benefits are in fact receiving those benefits instead of full unemployment benefits they would have received if they had been laid off. Secondly, Commissioner Lang's letter seems to suggest that work sharing would have a negative impact on the Unemployment Trust Fund when, in effect, I believe the opposite is true. The Congressional Research Service report that was included in my handouts found that the impact of work sharing on the solvency of state unemployment programs, as reflected in the balance of state unemployment trust funds, is probably small. Similarly, a survey of states with work-sharing programs done by the state of Indiana found that nearly every state reported a minimal impact on their state trust fund, and a key finding of Washington State's 2003 assessment of their work-sharing program was that employers who participated in the program do not have a negative impact on the UI trust fund. In fact, the report found that businesses who participated in work sharing generally remained active in the years following participation, which proves that work sharing can be an effective tool to help businesses weather economic downturns. Again, I've included a number of resources on work sharing in the materials I provided to the committee, for your review. Otherwise, I'd be happy to answer any questions you may have. [LB791]

SENATOR LATHROP: Senator Carlson. [LB791]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Mello, did any group ask you to carry this bill? [LB791]

SENATOR MELLO: No, this was legislation...my legislative district in south Omaha over the last three years has seen a significant increase in unemployment, businesses coming and going, primarily manufacturing companies who have had to see downsizing in recent years, and this was my office's effort to look and see what other states are doing to help stave off layoffs. [LB791]

SENATOR CARLSON: Did you use another bill from another state as a model? [LB791]

SENATOR MELLO: We didn't use one particular state. There was a few states that we looked at in regards to pulling together a good amount of the language. The state of Missouri, we used some of their legislation. Some of the other states, that report, Rhode Island, Washington, we looked at some of their proposals as well to fine-tune what ultimately we thought would work best for Nebraska. [LB791]

SENATOR CARLSON: Thank you. [LB791]

SENATOR LATHROP: Senator Mello, can you tell me the benefit to the business community? I can see the benefit to the employee. The employee, we're going to lay off

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fewer employees, the employee gets unemployment compensation benefits, but what's in it for the business that...the business community? [LB791]

SENATOR MELLO: Well, I think perhaps one of the biggest issues in regards to when a business has to lay off employees, their hope and intention is obviously to want to weather an economic downturn that caused those layoffs, which means at some point they're going to have to rehire people who they had laid off to ensure they have a skilled work force. Work-sharing programs in other states have shown businesses are able to, instead of having to spend money on recruiting, retraining, and rehiring new employees after they laid them off, they're simply able to reduce the employees' hours to the point where they're able to keep those skilled workers on the job, weather the economic downturn for up to a year, as it's laid out in the bill, while keeping those people in place and eventually moving them back to full-time employment. So I'd say the biggest benefit it has to Nebraska businesses is in regards to maintaining a quality work force through an economic recession, similar to what we just went through right now, instead of laying off thousands of employees and ultimately having to pay. The argument I make and others may make as well is that for an employer to have to lay off, let's say, 20 percent of their work force, that ultimately means those 20 percent of workers are getting full unemployment benefits from the state. Under this proposal, most states...we limit it that it has to be a minimum of 10 percent, maximum 40 percent, they may be able to keep their employees at 32 hours a week and unemployment insurance would be able to allow the employee to draw down that extra 8 hours a week of their potential wages. So I see potential benefits across the board for employers, both on the work force end but also in the sense, I make the argument, in regards to the unemployment insurance taxes they would have to pay if they went through a full unemployment or, I'm sorry, they went through a full layoff of the people that they would submit under a work-sharing program. [LB791]

SENATOR LATHROP: And I have one more question for you and that is if you had a work force that is predominantly members of a union, say a manufacturing concern and the employees are organized, does this supersede the contract or in what way would this...what's the accommodation or how does the union contract and the bill, how are they reconciled? [LB791]

SENATOR MELLO: In this legislation and in most states, they have a provision in work sharing that if a business...the segment of workers that they would like to be part of a work-sharing program, if they're covered by a collective bargaining agreement, that whoever represents that collective bargaining agreement would also sign off on the reduction of hours and reduction of hours for their work force. It's something that has been mostly universal across the board for states who have passed this, and we have that provision in this legislation as well. [LB791]

SENATOR LATHROP: Okay. Good. Senator Carlson. [LB791]

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SENATOR CARLSON: Thank you, Senator Lathrop. I think right off the bat you said this would be voluntary. [LB791]

SENATOR MELLO: Yes. [LB791]

SENATOR CARLSON: Okay. And then you also, I thought, made a statement about cutting production 20 percent. What was that statement? [LB791]

SENATOR MELLO: If a company was faced, for an example, you know, a manufacturing company in the great recession we just are coming out of right now, say in 2010 felt that they had to cut 20 percent of their production because of lack of purchasing, they weren't able to sell their products, they had to reduce their production on the manufacturing line, they then in theory...a business practice would be if we're cutting production by 20 percent as a business we need to obviously cut our work force 20 percent because there won't be the work for them to do. That was the example that we used where, instead of cutting 20 percent of the work force by laying off individuals, they instead could reduce 20 percent of the hours their employees worked so that they kept people employed but ultimately drew down funds for the unemployment insurance for those workers. Workers would never fully recover the amount of wages they would lose working full-time. That's an understanding both of the employer and the employee in these programs. But it helps mitigate the bigger loss that we see in the economy of laying off individuals, mass layoffs possibly, to keep them employed long enough so that the company or the business may be able to hire them back full-time within a year. [LB791]

SENATOR CARLSON: There would be the possibility, if hours were cut back 20 percent, production might not be cut back at all. That might be a problem. [LB791]

SENATOR MELLO: That actually will be determined by the Department of Labor because each business who would like to, since this is a voluntary program, a business would have to apply for essentially the Department of Labor to allow them to do this. And so the business would have to provide the reasons why they're ultimately doing a work-sharing program for the Department of Labor to determine whether or not they approve or deny a plan to be able to do this. So if a company chose to do that, that would be left, I would say, up to the Department of Labor and their interpretation of this legislation, which I would see that's...unless they're planning on laying off massive amounts of employees and that was their sole purpose, the Department of Labor would ultimately be the entity that would deal with the yea or nay on approving it. [LB791]

SENATOR CARLSON: Okay. Thank you. [LB791]

SENATOR LATHROP: Very good. Thanks, Senator. [LB791]

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SENATOR MELLO: Thank you. [LB791]

SENATOR LATHROP: Are you going to stay to close? [LB791]

SENATOR MELLO: As long as I...as long...till I get called to my next bill hearing downstairs, which if it does I'll leave and I'll waive closing. [LB791]

SENATOR LATHROP: Okay. Very good. Thank you. Mr. Mass here in support. [LB791]

KEN MASS: Good afternoon, Senator Lathrop, members of the committee. My name is Ken Mass, here today representing the Nebraska AFL-CIO and that's M-a-s-s, and here today in support of LB791. We thank Senator Mello for introducing the bill and basically LB791 would create a work-sharing program with an existing unemployment insurance program. Rather than wait until companies have to lay off a large portion of their employees, work sharing gives businesses the option to reduce hours for all of its work force, enabling those workers to collect a proportional share of unemployment insurance benefits. Under the current system, for example, if an employer needs to reduce payroll for several months to weather a downturn, they might have to lay off 20 percent of their employees, who end up collecting unemployment insurance benefits while their former coworkers keep on working full-time at their regular pay. Under work sharing they can avoid layoffs entirely, keep all of their trained and valuable employees, and plan to bounce back by reducing workers' hours and allowing them to access a limited amount of unemployment benefits. LB791 work-sharing programs are also good for business. One of the greatest implements on jobs creation comes out of the recession, and recruiting and training good employees is part of a recovery plan. Work sharing allows employers to hold on to skilled, experienced workers and to maintain productivity by morale, which typically suffers greatly during mass layoffs. On the flip side, work sharing can also be a cost-effective alternative to layoffs for businesses that could have a good chance of bouncing back soon. The cost of severance pay package in a layoff can far outstretch the cost of temporarily maintaining benefits for workers who have otherwise had to be laid off. Avoiding job loss can also impact local businesses that depends on workers spending on goods, services; minimizes the effect of secondary jobs loss and inevitably result in layoffs; what is more, by bursting a wide base of consumer spending while decreasing the number of laid-off workers who depends on healthcare and other public services. Work sharing lowers the burden on state and local governments in (inaudible) public (inaudible) revenue. I bring your attention that work sharing has been implemented in many states, 20 states, but our neighbors of Colorado, Iowa, Kansas, Missouri are part of the 20 states. These states were able to help large numbers of people keep their jobs while they would otherwise have lost them. Many states with work-sharing programs started...stated to see enrollment spikes during the new recession. With that, have any questions, I feel free to answer them. [LB791]

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SENATOR LATHROP: Thanks, Mr. Mass. Any questions? Senator Carlson. [LB791]

SENATOR CARLSON: Thank you, Senator Lathrop. Ken, I don't really...I'm not understanding this but I'm trying to, so let's take a case that's easy to figure. There's a business with 100 employees... [LB791]

KEN MASS: Uh-huh. [LB791]

SENATOR CARLSON: ...and it may be necessary to make some kind of an adjustment that would be the equivalent of laying off 20 of the 100. [LB791]

KEN MASS: Twenty percent, okay. [LB791]

SENATOR CARLSON: Twenty percent, 20 employees. Okay. In practical terms, how does that work? So now we're going to have the 80...we're going to have everybody working 20 percent fewer hours. Nobody gets laid off. [LB791]

KEN MASS: That's correct. [LB791]

SENATOR CARLSON: And what about benefits? How are they affected? [LB791]

KEN MASS: Benefits keep going. They're full-time employees. [LB791]

SENATOR CARLSON: So they're not affected. [LB791]

KEN MASS: That's correct. [LB791]

SENATOR CARLSON: On the other hand, how does it work if an employee is actually laid off? How do benefits work? [LB791]

KEN MASS: They basically, health and welfare, ends at the end of the month that they get laid off and then they go, you know, they're able to buy healthcare through COBRA at their own personal... [LB791]

SENATOR CARLSON: Right. They could continue it at their own expense. [LB791]

KEN MASS: Yes, sir. [LB791]

SENATOR CARLSON: So there is a difference in terms of the obligation of the employer to go to something like this because the employer is going to continue to pay his or her share of the fringe benefits,... [LB791]

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KEN MASS: That's correct. [LB791]

SENATOR CARLSON: ...whereas on a layoff...I'm just trying to get it straight, but that is a difference there, isn't it? [LB791]

KEN MASS: Uh-huh. Uh-huh. [LB791]

SENATOR CARLSON: Okay. [LB791]

KEN MASS: Yeah. [LB791]

SENATOR CARLSON: All right. Thank you. [LB791]

SENATOR LATHROP: If I understand, the employees can't force this on an employer. It's the employer who has to say this is a better deal for me or I feel better running my business by asking everybody to take a 20 percent cut in hours under this program... [LB791]

KEN MASS: Uh-huh. [LB791]

SENATOR LATHROP: ...rather than laying off 20 percent of my people. [LB791]

KEN MASS: Correct. [LB791]

SENATOR LATHROP: Okay. All right. Just wanted to make sure that didn't provoke any other questions. All right, thanks, Ken, appreciate it. [LB791]

KEN MASS: All right. [LB791]

SENATOR LATHROP: Anyone else here as a proponent who cares to testify? [LB791]

KATE BOLZ: (Exhibit 5) Good afternoon. My name is Kate with a K, Bolz, B-o-l-z, and I am here today representing the Nebraska Appleseed Center for Law in the Public Interest. We support LB791 for the reasons stated by Senator Mello and Mr. Mass. As an advocacy organization specifically interested in the well-being of low-income, working families in Nebraska, I would also like to add two small points in support of this legislation. The first is that in focus groups held this summer and fall with low-income Nebraskans and Nebraskans receiving public benefits, one of the barriers to reentering the work force for many of those individuals was a varied and uneven work history. If this bill keeps even a portion of those folks employed in a steady manner, that will help their economic stability in the long term. Second, I would like to point out that a significant portion of Nebraska's work force, about one in four of working families in Nebraska, is considered low income, which means that sometimes they struggle to

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make ends meet. If this legislation keeps those workers working, those workers who are often the most vulnerable to layoffs, it will help them retain economic stability in the long term. For those reasons and for the other reasons stated today, we support this legislation. [LB791]

SENATOR LATHROP: Very good. Thanks, Kate. Any questions? I do have a question, and if you don't have the answer to this I'll wait until Senator Mello gets back up here, and he can be thinking about this. I want to know what the net impact is to the fund. If you have...and we'll use the example 100 employees, we need to reduce the production by 20 percent so we can lay off 20 percent or we can ask everybody to work 80 percent of the hours. It's a pretty simple...pretty simple example but maybe we need something simple to come up with this. Is it cheaper on the fund to pay this benefit to everyone who is taking a 20 percent cut than it would be to have 20 percent of the people leave and pay them a full benefit? Do you have an answer or have you done the math on that? [LB791]

KATE BOLZ: As I understand it, Senator, and Senator Mello may have something to add, in the short term I think it would be about even because it's either laying off 20 percent or compensating 20 percent. In the long term, I would imagine that it would be a positive benefit to the fund because we've seen in the economic downturn a significant amount of people facing long-term unemployment. So if we are able to retain those people working and not get them out of the work force which they tend to cycle down into, they would be receiving unemployment insurance for longer, which would have a detrimental impact on the fund. [LB791]

SENATOR LATHROP: Okay. Would the unemployment compensation paid to those working 80 percent of their normal hours, how much of the 20 percent that they're losing in pay, using our example... [LB791]

KATE BOLZ: Uh-huh. [LB791]

SENATOR LATHROP: ...or our hypothetical, how much of that 20 percent is made up for by the unemployment? Do you know? [LB791]

KATE BOLZ: Can you repeat your question? [LB791]

SENATOR LATHROP: Right. We've gone from making 100 percent of our normal wages down to 80 percent in our example, and unemployment is making up some of the difference in the 20 percent wages that we've lost. [LB791]

KATE BOLZ: I see. [LB791]

SENATOR LATHROP: Do you know how much of the difference they make up?

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[LB791]

KATE BOLZ: I don't but perhaps Senator Mello can answer more. [LB791]

SENATOR LATHROP: Okay. Okay. Good. Any other questions? Seeing none, thanks for coming down today. Any other proponents? Anyone here in opposition to LB791? Anyone here in a neutral capacity? Okay. The chamber is very neutral today... [LB791]

RON SEDLACEK: Some. [LB791]

SENATOR LATHROP: ...somewhat. We'll just see how much neutral you are. Welcome back. [LB791]

RON SEDLACEK: Thank you, Chairman Lathrop and members of the Business and Labor Committee. My name is Ron Sedlacek and I'm...and that's spelled S-e-d-l-a-c-e-k, again for the transcribers, representing the Nebraska Chamber of Commerce in a neutral capacity. We have not had a chance yet as a organization to thoroughly review the legislation and to get as much information as we desire to answer a number of questions that have been raised by those who have reviewed it, and we intend to do so in the next...within the next week as we have our council meetings to address this issue. I have...I did speak with Senator Mello prior to the hearing, short conversation to let him know that we were continuing to have interest as well as to try to find particular solutions to a work-sharing program in Nebraska but one that has financial integrity. And we believe this is patterned after other states, but every state law, in the way unemployment comp is financed, is different and Nebraska is quite unique in that regard. I note the previous testifier talked a little bit about impact, in response to your question, on the trust fund and actually was kind of answering the question, if you were...as if you were a reimbursable employer as opposed to a contributing employer. And generally speaking, the State Chamber represents contributing employers as opposed to reimbursables, so that makes a difference in that regard. On page 9 of the bill, and it's pretty much the financing mechanism that is the concern, and on page 9 of the bill, if you'll take a look at subdivision (7), that would be lines 13 to 17, we've got a few issues here that can be possibly worked out if...and maintain the integrity of a program such as this that's voluntary in nature. However, what it does, essentially, it does not address, one, experience rating and how that increases on that employer. If you enter into such a program, then how is it counted, you know, against your experience? And let's say you're a negative balance employer and it does, it's going to take years and years and years to recoup that cost in the meantime and to get, you know, if you were to get back into a positive situation. By the same token, if you're a positive balance employer, it's going to definitely increase your experience and you'll be paying long term more taxes in order to do that. But that's up to the employer if it's voluntary. However, the impact on the trust fund generally then, and I'll stand corrected if this is incorrect, but I believe this to be the case, is that there will be a drain on the

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fund. You cannot recover all that in one year from the employer, so it's taken out of the trust fund which means all other employers under Nebraska's system would have to contribute more in order to make up for that one employer electing to do this program. And in that sense, we don't believe that it is just or equitable for all employers then to pay for that voluntary decision of that employer. The other issue is on page 15 (sic), and you can see where it's talking about benefits paid are chargeable to participating employer but then it goes on... [LB791]

SENATOR LATHROP: There's no page 15. [LB791]

RON SEDLACEK: Oh, I meant line 15. [LB791]

SENATOR CARLSON: Line 15. [LB791]

RON SEDLACEK: I'm sorry. [LB791]

SENATOR LATHROP: Okay. [LB791]

RON SEDLACEK: On page 9, line 15, and it goes "or any other base period employer," and so it throws back to other employers. So here's an employer who decides to enter the program and another base period employer gets sucked into it and then that increases their taxes additionally, prolongs the pain. It's going to take a few more years for them to recoup. And so essentially what we're talking about is that if an employer voluntarily wants to get into this, they ought to pay for it. [LB791]

SENATOR LATHROP: Okay. Thanks, Ron. I will...you'll work with Senator Mello on your concerns... [LB791]

RON SEDLACEK: Uh-huh. [LB791]

SENATOR LATHROP: ...after your board meets or you get some... [LB791]

RON SEDLACEK: As well as the Department of Labor, if they would help out in that regard. [LB791]

SENATOR LATHROP: Participate? [LB791]

RON SEDLACEK: Uh-huh. Uh-huh. [LB791]

SENATOR LATHROP: Okay. Very good. Any other questions? Okay. Thanks, Ron. We've been joined by Senator Smith and Senator Wallman, so I'm introducing my other colleagues to my left. Good to have you guys here. Anyone else here in a neutral capacity? Seeing none, Senator Mello, you are good to close. [LB791]

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SENATOR MELLO: I'll close briefly to try to answer your question, Senator Lathrop, and I would be remiss to not provide the committee that Ron Sedlacek, from the State Chamber of Commerce, spoke with me and expressed their neutral testimony but, as he just mentioned, they were more than willing to sit down and discuss, both with the committee counsel and Department of Labor, to find an equitable way to finance the work-sharing program since it's their belief currently, as the bill is drafted, that it would...there would be some potential concerns in regards to how it would be financed. The underlying issue though that you asked, Senator Lathrop, and it was the research of multiple other states who have done these programs shows that the ultimate impact on the unemployment insurance fund is minimal at best. Part of the information we provided you in the packet was some of the research from other states. The state of Indiana did a report, a research report, of what other states have done with their work-sharing programs and shown that the impact is minimal on the ultimate unemployment insurance fund when businesses choose to enter into these agreements. But as I mentioned before, I appreciate the good faith effort of the State Chamber of Commerce to want to work on this issue with us, as well as the committee, to hopefully see this program become a reality. [LB791]

SENATOR LATHROP: Very good. Any questions for Senator Mello? Senator Carlson. [LB791]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator Mello, on the shared work unemployment compensation, if we clear this up, it is voluntary, but an employer decides to enter it then...and we'll go back to our 100 employees and 20 percent reduction, it's mandatory participation for all employees. [LB791]

SENATOR MELLO: No, it's not actually. It's...being a voluntary program, we've put up some parameters in regards to the percentage of employees that can be...or I should say the business has the ability to determine what employees they want to be involved. The parameters we put up though is in regards to the number of hours that they would be reduced, from 10 percent, with a minimum 10 percent, with a maximum 40 percent. That is the parameter in which an employee's hours can be reduced. A company with 100 employees could change, could decide that they only wanted to involve 5 employees or 10 employees or 30 employees. We leave it up to the business to determine what they want to put in that plan when they submit it to the Department of Labor. The caveat though is if you choose to enter into an agreement, a work-sharing agreement, with the Department of Labor essentially under this bill, is that it limits in regards to your ability to hire new employees when you have employees already a part of a work-sharing program; that those work-share employees who have seen their hours reduced to keep them employed ultimately would be the people who would be hired back first. You wouldn't want to...we don't want this set up so that a business could reduce the hours of 20 percent of their employees and then come around and hire 20

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new full-time employees for half the cost or a third of the cost, which would be them being able to game the unemployment insurance system by doing that. So this has appropriate checks and balances for those who want to enter into this agreement, but ultimately the flexibility still resides with the business since it's a voluntary program. [LB791]

SENATOR CARLSON: I understand about not being able to hire new employees during this period of time, but are you saying that out of 100 employees the employer could decide, I want to affect 20 of them, and that's the only 20 out of the 100 that are affected? [LB791]

SENATOR MELLO: Yes, instead of laying those 20 employees off, this is what we will do. This is our way of doing it. Now they can do it by...I guess we list it out in regards to the business's ability to affect their entire work force, segments of their work force, divisions of their work force. We leave it up to the employer, which is why I say the report shows from other states the costs are minimal at best, because a business of 100 employees may only want to reduce 10 percent of their production, but that doesn't...so for them to reduce 10 percent of their reduction they either have to eliminate...they could have 20 employees, reduce their work hours by, oh, what would that be? I'm trying to do the math off the top of my head and I apologize. Maximum may be 40 percent, they would reduce their hours by 40 percent, those 10 employees, to equate that 10 percent reduction. Now my math could be off here. I'm trying to do it off the top of my head. But the reality is that the flexibility is provided to the business, I should say, to determine this. [LB791]

SENATOR CARLSON: Okay. And I think there's a little bit of wrong terminology maybe that I wouldn't agree with you on here, but suppose the employer would be looking at what portion of my expenses do I need to eliminate, not production, expenses. I need to eliminate 20 percent of my expenses. Then I have the option, as an employer, of involving 20 employees or 40 employees or 60 employees to get that 20 percent reduction. Is that correct? [LB791]

SENATOR MELLO: You can involve...ultimately, the flexibility is left to the business to determine what feels best for the business to participate in this program. So if a business needs to reduce 10 percent of their production, and thus needs to reduce 10 percent of their work force... [LB791]

SENATOR CARLSON: Expenses. Expenses. [LB791]

SENATOR MELLO: Expenses, okay, 10 percent of their expenses, they have the flexibility to reduce that 10 percent of expenses through a work-sharing program up to reducing an...one employee's maximum number of hours they could be reduced is 40 percent. So you could have five employees' hours that have reduced to 60 percent of

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what they're currently doing to meet that 10 percent workload or reduction. It's left up to the employer to determine these are the people who'd I'd rather put on work share in comparison to others, this is how it works for my business model, and also I'm not laying these people off because they have inherent work force skills that will help my business continue to do what we need to do. The flexibility resides purely in the business to determine this model that works for them. [LB791]

SENATOR CARLSON: Okay, not that I'm opposed to this but I think, in practicality, the way it may tend to work is that if there's a necessity to reduce 20 percent of expenses, I'm going to...I'm going to involve more than 20 percent of the employees. I'm going to involve 60 percent of the employees. Then what has really happened there is that tenure doesn't have much of an advantage and so it kind of hurts the long-tenured employees, but it helps the short tenured because last hired are usually the first to go when you have a cutback. Would that be fair? [LB791]

SENATOR MELLO: You know actually there's...some of the information we provide you is the AARP provides a policy report of why they feel work-sharing programs is beneficial to senior citizens who are in the work force actually, so they actually take a different perspective than that of saying it keeps employees who may have more work force skills, may have higher salaries and pay because of longevity, it keeps them employed as much as it keeps the lower skilled, least longevity employees. Because it's purely left up to the business to determine what business model works best for them. You may have 60 percent of your business employees do one task and 40 percent does another, and your business model may say we have to reduce part of the 60 percent and not the 40 percent. This program allows you to keep all those people employed, reduce the hours that you see fit to keep your work force where you need to keep it while also keeping people employed and off unemployment insurance and other public assistance programs. [LB791]

SENATOR CARLSON: Thank you. [LB791]

SENATOR LATHROP: Senator Smith. [LB791]

SENATOR SMITH: Thank you, Senator Lathrop. [LB791]

SENATOR LATHROP: And I should, before you speak, I should have recognized my good friend Senator Ashford came in since we introduced the committee, so I think we're at full strength. And now Senator Smith. [LB791]

SENATOR SMITH: Thank you. Senator Mello, forgive me if I'm asking something here that may have already been asked before I arrived, but I want to touch first on what Senator Carlson was asking. The restriction on being able to hire during this period of time that you have this shared work group taking place, that limitation only applies to

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employees within that same division or work group or classification, if you would?
[LB791]

SENATOR MELLO: The way it is right now, yes; in the way it's drafted in the bill, yes.
[LB791]

SENATOR SMITH: So if my cutback, if I determine my cutback had to be in one of the administrative offices but if I had to go out there and hire more construction workers, I could do that. My sharing is taking place in the office. [LB791]

SENATOR MELLO: Based in the legislation, the plan that's submitted to Department of Labor, a business needs to provide that information and that is the guideline they'd follow. So that's a good example you used, construction. You could also use a manufacturer who has production line employees and employees who are in the shipping area. If you want to do shipping, so to speak, or reduce the hours or work-sharing plan with your division of shipping, you would be able to do that. You would be able to reduce those hours, keep those people employed. You wouldn't be able to hire new positions in that area, but you would be able to hire new people in another part of your business that was not affected by that work-sharing plan. [LB791]

SENATOR SMITH: And if, let's say, for whatever reason the sharing was not working out, you're not gaining the level of productivity or maintaining the level of productivity that you wanted to and there's an employee performance issue, you could go ahead and address that through your normal means. That's not affected by this law in any way.
[LB791]

SENATOR MELLO: It's a voluntary program that ultimately gets signed off by the Department of Labor with a maximum one-year participation. So ultimately a business can determine to end that participation at any moment they so choose, because it's voluntary. I hope that answers the question. [LB791]

SENATOR SMITH: Yes. And then, let's say, within the employee handbook of the company this full-time employee received...maybe they were at two weeks of paid vacation, they had X number of sick days, and then you go into this shared program, they are able to retain benefits? [LB791]

SENATOR MELLO: Fringe benefits, as I...I apologize, I mentioned, I did mention this in my testimony, fringe benefits are not affected by the work-sharing program. Health insurance and retirement benefits are not affected by it. It's purely the wages that are affected by it through the program. [LB791]

SENATOR SMITH: Okay. So if you normally do not provide these types of benefits to part-time employees, anyone under...working under 30 hours let's say, would you have

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to continue to provide them these benefits under this program? [LB791]

SENATOR MELLO: Ultimately, if your business does not provide those now, you would not be required to provide anything more. You would not be required to provide anything more than what you're currently providing now under a work sharing. [LB791]

SENATOR SMITH: Well, you're currently providing it to full-time employees. [LB791]

SENATOR MELLO: Yes. [LB791]

SENATOR SMITH: And let's say as a business you define full-time as more than 30 hours. You go into this shared process and now, under this new shared program, the employee is working 25 hours. [LB791]

SENATOR MELLO: You'd still be required under the bill. Fringe benefits would not be impacted with a work-sharing program no matter if you cut the employee's hours by 40 percent, which is the maximum number of hours you could cut their wages or the percentage by. They would still be...the program still keeps health insurance and retirement benefits, whatever the employer is providing to that person or that employee now, they'd still have to continue to provide that in a work-sharing plan. [LB791]

SENATOR SMITH: Okay. And if they were providing two weeks of paid vacation before, they would have to continue to pay two weeks' paid vacation now. [LB791]

SENATOR MELLO: Fringe benefits that are provided to a full-time employee before they entered a new work-sharing plan would stay the same. They would simply reduce the hours or the amount that they would ultimately work to meet a work-sharing plan entered in with the Department of Labor. [LB791]

SENATOR SMITH: So if you cut the hours in half, perhaps you'd cut the number of vacation days in half. [LB791]

SENATOR MELLO: How... [LB791]

SENATOR SMITH: That's not what I'm hearing? [LB791]

SENATOR MELLO: No, that's not ultimately part of the legislation. [LB791]

SENATOR SMITH: All right. [LB791]

SENATOR MELLO: Once again, fringe benefits do not change under a work-sharing plan,... [LB791]

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SENATOR SMITH: All right. [LB791]

SENATOR MELLO: ...simply the hours or the percentage of what the employee works is reduced to make up, what Senator Carlson mentioned, the expenses that a business would like to reduce on. [LB791]

SENATOR SMITH: All right. I understand, so as a full-time employee. [LB791]

SENATOR MELLO: Yes. [LB791]

SENATOR SMITH: Okay. Thank you. [LB791]

SENATOR LATHROP: Okay. I think that's it. [LB791]

SENATOR MELLO: Thank you. [LB791]

SENATOR LATHROP: Thank you, Senator Mello. We appreciate it. The record will reflect that we received a letter from the Department of Labor dated January 23, 2012. (Exhibit 6) That will be made part of the record. That is an indication that the department is not taking a formal position. And with that, we'll close the hearing on LB791 and move to the next bill, which would be LB866, and bring us to Senator Ken Haar, with two A's and one R. [LB791]

SENATOR HARR: Thank you.

SENATOR HAAR: I get confused. I'm Ken and he's Burke so...

SENATOR LATHROP: Okay.

SENATOR HAAR: Go ahead?

SENATOR LATHROP: You're up.

SENATOR HAAR: (Exhibit 7) Mr. Chairman, members of the committee, I wanted to have a show of hands here but I suspect many of you have read Catch-22 by Joseph Heller, and the hero, I guess you might call him, of Catch-22 is John Yossarian. He was a U.S. Army Air Force B-25 bombardier who wished to be grounded from combat flights. And his concept, and everybody agreed, is you'd be crazy to want to fly...that you want to fly bombardier on a B-25; that it was a very vulnerable proposition to flak and that sort of thing. So all you had to do was ask and you'd be relieved of going beyond your specified number of flights, but as soon as you did, as soon as you asked, you would no longer be crazy because a crazy person wouldn't think to ask. So that was the original Catch-22. There are a lot of other sorts of ways of explaining it: a no-win situation;

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double-bind; damned if you do, damned if you don't. All he had to do is ask but as soon as you asked you would no longer be crazy--the unsolvable dilemma. Well, it's unfair, it's wrong. And there's a situation, a Catch-22, that's developing in this country in this time of high unemployment and the Catch-22 is simply this. It's people advertising for jobs and saying if you're unemployed you can't apply--Catch-22. It's an unsolvable dilemma, something we don't want in Nebraska. And I've provided a couple of handouts but a recent...and this is as of July in 2011 so it's fairly recent, a recent review of job vacancy postings on popular sites like Monster.com, CareerBuilder, Craigslist revealed hundreds that said employers would consider only people currently employed or just recently laid off. And the handout I provided you that's already folded, this was a poll that was taken and the question that was asked of people is right there. It says, under Figure 1: Some companies may have a policy that they will not hire or consider someone for a job opening if that person is currently unemployed, regardless of their qualifications. Do you think this is a fair or an unfair hiring policy? And Americans being the fair people we are, 80 percent thought it was very unfair, and so do I, and we don't want that happening in Nebraska. And so if you turn...again the handout that I had folded, just to show you, if you'd turn to page 8 is a sampling of those kinds of discriminatory job postings. And they were not only companies but they were also, and maybe more insidious, they were companies that hire for other companies. And currently...and you can see there, the exclusionary reference in the second column that was given, and this goes on for pages and pages. Several states, including New Jersey and New York, was under consideration at the time of this article but passed laws disallowing that kind of discrimination, saying the only way you can be...we'll consider you for employment is if you're currently employed. Again, the alternative is to subject unemployed people to this Catch-22 situation. So LB866, the Nebraska Fair Employment Opportunity Act, makes unlawful to refuse to consider for an employment an individual because...simply because of the status of unemployment, to publish an ad that include any provision stating that unemployed status disqualifies an individual, to direct or request that an employment agency take unemployed status into account. So really the gist of it is that this would make it illegal to post or consider employment requiring that a person be currently employed. If you looked at the list starting on page 8 there, just say we can't point to a specific instance in Nebraska where this has happened but we don't want it to happen in Nebraska. Again, some of the postings on here you'll notice are from employment agencies, and so some of these could very likely be agencies offering Nebraska jobs. We don't know that. A little surprised at the fiscal note, I must say, but I guess we're always surprised at our own fiscal notes on our bills, but they're assuming that this situation occurs in Nebraska because of the size of the fiscal note. There's a letter from the state of Nebraska from the Department of Labor saying that they have a neutral position on this. My position on this, and I hope you'll concur and pass it out of committee, is that it's unfair; that for somebody who is unemployed may certainly be unemployed through no fault of their own, and then to require that as...employment to be a job qualification for the next job is unreasonable and it's certainly not Nebraska values. [LB866]

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SENATOR LATHROP: Very good. Thanks, Ken. Are there any questions for Senator Haar? Senator Carlson, you're recognized. [LB866]

SENATOR CARLSON: Thank you, Senator Lathrop. On putting all this together... [LB866]

SENATOR HAAR: Yes. [LB866]

SENATOR CARLSON: ...(inaudible) on the discriminatory language, you probably got this off a source, so you didn't put this together. [LB866]

SENATOR HAAR: No, I didn't put this together. [LB866]

SENATOR CARLSON: You got it...yeah, and I wonder certainly a part of an application would not only be currently employed but even if you were there might be, probably next to it, would be how long, because just looking at this I could say, well, shoot, I can go out and get a job someplace and I'm currently employed if it's for one week. That takes this away. But it doesn't really take it away if there's a piece of information following it that wants to know how long I've been employed in that current position. [LB866]

SENATOR HAAR: Yeah. [LB866]

SENATOR CARLSON: Otherwise it's kind of easy to use this as an excuse unless the length of employment makes a big difference. [LB866]

SENATOR HAAR: Uh-huh. Now there is a provision...there are provisions in the bill, without going into a lot of detail, protecting people who would report this. And there also is the...and I'll just read this so I get it right: It's not unlawful to consider status as unemployed if an individual's employment is a bona fide qualification reasonably necessary to successful performance. So if somebody had been out of work for ten years on, let's say, a mechanical press of some kind and in the meantime you have a computerized press in operation, I mean having current employment history could be an important part. So there is an exception if you can demonstrate that that's necessary, but generally it says that unemployment itself, all by itself, can't be used against a person. [LB866]

SENATOR LATHROP: Senator Smith. [LB866]

SENATOR SMITH: Thank you, Senator Lathrop. Senator Haar, so the burden is on the employer making the decision to hire as to whether it is a bona fide reason to consider that. So if we are in an interview and I'm...you've brought your resume to me and your application and we're looking over everything and there's a gap, is it proper or improper

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for me to ask you to fill in that gap for me? [LB866]

SENATOR HAAR: Oh, I think that would be proper and, frankly, we were sitting this morning trying to figure out what kind of job that would be where continual employment was necessary and it's kind of hard to think of a job like that. But certainly you can ask questions. But the fact that I'm sitting down to interview with you would already mean you hadn't...that in the advertisement you hadn't said you have to be employed, for example. [LB866]

SENATOR SMITH: But let's say up to 300 days pass. I mean at 280 days, 280 days ago I interviewed you and I asked you to fill in that gap for me and you said, well, you know, during that period of time I've been unemployed, and I've made my decision to provide the job to someone who maybe is more current on their skill sets and is a bona fide reason, but you have up to 300 days possibly to come back and say, you know, that you interpreted that as being discriminated against. Is that...am I correct that that's a possibility? [LB866]

SENATOR HAAR: Yes. And in that case, if I filed a complaint, it would go before the Nebraska Equal Employment Opportunity Commission, so there would be a hearing. [LB866]

SENATOR SMITH: And so an investigator would likely come to my business... [LB866]

SENATOR HAAR: Uh-huh. [LB866]

SENATOR SMITH: ...and I would have to retain legal counsel, too, because that most likely a Department of Labor person would come in, they would interview my employees and there could be legal action. [LB866]

SENATOR HAAR: There could be. [LB866]

SENATOR SMITH: Okay. [LB866]

SENATOR HAAR: There could be. Uh-huh. [LB866]

SENATOR SMITH: And...okay. Thank you very much. [LB866]

SENATOR HAAR: Uh-huh. [LB866]

SENATOR LATHROP: I see no other questions. We'll start with the proponents. Are you going to stay to close? [LB866]

SENATOR HAAR: Yes, I will. [LB866]

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SENATOR LATHROP: Okay. Very good. [LB866]

SENATOR HAAR: I'll stay to close. Thank you very much. [LB866]

SENATOR LATHROP: Thanks, Ken. [LB866]

KEN MASS: Senator Lathrop, members of the committee, my name is Ken Mass. I'm here today in support of LB866. Last name is M-a-s-s. LB866 and today would, as we have about 43 percent of the 5.7 million that are unemployed, looking for and unable to find a job for at least six months. The average unemployed worker searches for a job more than nine months, the longest of any recession on record. Making matters worse, employers of all sizes, like a staffing agency and on-line job posting firms, are using recruitment and hiring policies that deny employment to unemployed simply because they are not currently working. In other words, at a time when competition for jobs is extraordinary and intense, more than nearly five unemployed job seekers for each job opening, some businesses and recruiting firms are telling would-be seekers they cannot get a job unless they already have a job. Now I don't know of an employer in Nebraska that has made that statement. I have heard individuals come before me and say, yes, we've heard that and, needless to say, they give no names. The point is we don't want it to happen in Nebraska. And this model of legislation would make it illegal for employers, staffing agencies, and on-line job services to post job announcements that discriminate against the unemployed. It isn't my fault that because of whatever reason I've been laid off for over six months or up to a year. I have tried to get a job and because of this situation could be affecting me, because I'm unemployed, I can't get a job. So what it looks like to the person trying to hire me, I am a worthless person, I can't get a job. It's out of my control and that's basically what you're doing here, discriminating. But I can also tell you of an example a lady told me when she heard about this legislation. Her son could not get a job for over a year. She hired her son. She hired her son as her landscaper of her property, sent that into the employer that was trying to hire him and got a job one week later for this job, got hired because she sent the letter in, he was a contractor for her during her landscaping, the same company he had applied and applied and applied for over a year and couldn't get it. So what I'm saying is being as he was employed, he got the job. For over a year he couldn't get the job. So there are several states, New Jersey had made it illegal to use language for job discrimination, and same legislation is introduced in New York, Michigan, and Illinois. We'd ask for the committee's support of turning out the bill. Thank you. Any questions? [LB866]

SENATOR LATHROP: Senator Carlson has a question for you, Ken. [LB866]

SENATOR CARLSON: Thank you, Senator Lathrop. There's something wrong with our system, Ken, and I don't know what the answer is. But currently if you are on unemployment, receiving the maximum benefit, it's \$354 a week. Why would you look

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for any job that was less than \$354 a week? [LB866]

KEN MASS: Why would I? Why wouldn't I? [LB866]

SENATOR CARLSON: Because you're going to get cut off. [LB866]

KEN MASS: I've been cut off. I've been unemployed for over 32 years. [LB866]

SENATOR CARLSON: No, but you're getting \$354 a week through unemployment, so why would you even consider a job that pays less than \$354 a week? [LB866]

KEN MASS: This job pays almost \$20 an hour. Why wouldn't I consider it? [LB866]

SENATOR CARLSON: Because you had been making more than that and you're making... [LB866]

KEN MASS: At \$20 an hour at 40, that's \$800, that's \$40,000. [LB866]

SENATOR CARLSON: Over \$354 a week. Well, I call back on an experience that I had between 1967 and 1974 when I lived in Wisconsin and I loved to play golf and I was out playing one day with a man that I got acquainted with. And as we were walking I said, what do you do, and he said, I'm unemployed. And I don't even remember what he did but apparently he was in an area of work where he was employed during the fall and winter but unemployed during the summer and he could play golf and he had learned to live on that amount and was very, very happy. And that's not the way we ought to do things. So please agree with me, our system needs to be such that there's an incentive to go out and get a job... [LB866]

KEN MASS: Agree. [LB866]

SENATOR CARLSON: ...and not lose everything in the process,... [LB866]

KEN MASS: Agree. [LB866]

SENATOR CARLSON: ...not lose the entire benefit in the process, should be an incentive. Do we agree with that? [LB866]

KEN MASS: I agree with you. [LB866]

SENATOR CARLSON: Okay. Thank you. [LB866]

KEN MASS: Is that when you moved from Wisconsin to Nebraska, Senator? [LB866]

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SENATOR CARLSON: When my benefit ran out? (Laughter) [LB866]

SENATOR LATHROP: Ken, Ken, Ken, we'll ask the questions. I don't want to borrow a line from Burke, but all right, any other questions for Mr. Mass? Senator... [LB866]

SENATOR CARLSON: Ken has received my wrath some other time so that's okay. [LB866]

SENATOR LATHROP: That's all right. It's all good natured. Senator Smith. [LB866]

SENATOR SMITH: Thank you, Senator Lathrop. You know, this is probably not particularly a question but it's a statement. At what point are we going to stop regulating businesses to the point where we discourage them from hiring more people? In my private business outside of my \$12,000 a year here at the Legislature, I enjoy hiring people that are unemployed. We hire a lot of people that are unemployed and...but I know that there are some businesses out there, whenever they look at the risk of doing that, this adds to the risk of doing business. And in its current form, you know, if this type of regulation continues to come down our businesses out there are going to look to find ways of doing without these vacancies they have. I mean I'm in full support of preventing discrimination, but it seems to me that there is...the burden is on the employer to prove there's no discrimination here. In the scenario that I described to Senator Haar, when he was giving his opening, could you see that playing out where up to 300 days someone that did not get the job could come back against an employer because they happened to hire a person that was employed at the time? But it was because they had a legitimate reason for doing so and then that employer, it's going to cost them more money to protect themselves, to defend themselves and to potentially pay the fine of \$1,000, \$5,000. [LB866]

KEN MASS: Knowing your business on the outside, I would understand there's some prequalifications to hiring what you're looking for. If you're looking for a trim man, you're looking for...whatever you're looking for there's qualifications on there. Yes, there are people, in answer to Senator Carlson's question, there are people that run up and down the street to get somebody sign their name off looking for employment. I understand that. Those kind of people look, and they've got nothing else to do, they're on the computer all day and they're looking for jobs, they're applying for them, they may not be qualified for them. You still have the control of qualification for the job. But if I'm qualified for it and just because, and you may not be hiring, you may be hiring a hiring firm to look for people for you and they may be doing it without your knowledge, that's the concern. The hiring firm is hiring people without your knowledge of what they're telling these people and the employer could get caught in the middle of this thing without knowing anything about it. I think you see what I'm saying. But there's still qualifications that come along with it. We're not talking about entry level. We're talking about maybe something that...if you're looking for somebody who's already employed, I assume

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you're looking for somebody who's employed in the qualifications that you're looking for, just not being employed. So at least you're qualified of doing that, so... [LB866]

SENATOR SMITH: But you would have to at least agree with me that this increases the risk to employers in their hiring process. [LB866]

KEN MASS: Games are being played in everything and I'm sure there's some game players in this. [LB866]

SENATOR SMITH: I assume that's a, yes, you agree with me. [LB866]

KEN MASS: I'm sure there's game players on the other side too. [LB866]

SENATOR SMITH: Thank you. [LB866]

SENATOR LATHROP: Senator Cook. [LB866]

SENATOR COOK: Thank you, Mr. Chairman, and thank you, Mr. Mass, for coming today. Two questions come to my mind. Perhaps they're more musings than actual questions. The first is a question. Having skimmed the language of the bill, does this only apply to a prospective employee who has collected unemployment benefits during the time in which he or she is applying for that job? In other words, is the word "unemployed" necessarily linked to collection of the benefits, yes or no? [LB866]

KEN MASS: That would be no. They're applying because they're unemployed, period. [LB866]

SENATOR COOK: Okay, which kind of goes to more my musing. Since there are many people, lots of women people and men people, male and female people, better English, better said, who may have a child join their family through birth or adoption and take time out to get used to that new person in their house and they can't flee to the Legislature, like Senator Harr, H-a-r-r, may have done when his cute little girls came into the world. So it just concerns me that since it doesn't say she was collecting unemployment and hanging out at the mall or the wine bar, it says she was unemployed, and I don't think you can mark on your employment sheet, I was staying up until 4:00 in the morning and dealing with an infant or a brand new kid in the house. That's more of a commentary. Thank you. Thank you, Mr. Chairman. [LB866]

KEN MASS: Uh-huh. [LB866]

SENATOR LATHROP: I think that's...oh, we're not. [LB866]

SENATOR HARR: I would just quickly. [LB866]

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SENATOR LATHROP: Go ahead, Senator Harr. [LB866]

SENATOR HARR: And I do miss the days when it was acceptable to discriminate against the Irish, but to Senator Smith's comment, discrimination occurs all the time, correct? And while this does create a new...this would not create a new protected class, would it? Or would this create a new protected class? [LB866]

KEN MASS: The employee still has an opportunity today to go through where...the Equal Opportunity Commission if they feel like they've been overlooked and that kind of thing. But this would be a new avenue, new avenue where it gives some protection to the unemployed because of being overlooked just because they're unemployed, yes. [LB866]

SENATOR HARR: Okay. Thank you. [LB866]

KEN MASS: Yes. Yes. [LB866]

SENATOR LATHROP: It does in a very real way, doesn't it? I mean right now you cannot discriminate against somebody because of their race, religion, national origin, gender,... [LB866]

SENATOR COOK: Age. [LB866]

SENATOR LATHROP: ...age, and if you do or if someone suspects, then you go on down to the NEOC, you file a complaint, and this wouldn't be any different. [LB866]

KEN MASS: Uh-huh. That's correct. [LB866]

SENATOR LATHROP: Every person who is unemployed and didn't get the job because an employed person got the job will then be down at the NEOC. [LB866]

KEN MASS: That's correct. Yeah. [LB866]

SENATOR LATHROP: Okay. Well, we appreciate your testimony. Thanks. [LB866]

KEN MASS: Thank you, sir. [LB866]

SENATOR LATHROP: Is there anyone else here in support that cares to testify? Seeing none, anyone here in opposition? I think I get it. [LB866]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I am for LB866. As a liberal, I do not see why it's necessary for this bill. Talking to my conservative brother-in-law, I

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would think that I believe differently than he does. If I were hiring a person, I would not consider whether he was working or not working. I would consider what does he require, if he has the requirements that I need. If I needed a person, I would be looking for other criteria to hire a person. Evidently, this bill is necessary. Thank you. [LB866]

SENATOR LATHROP: And, Mr. Hedrick, I don't have a question other than to make sure I understand your position. Are you in support of this bill or in opposition to this bill? Do you oppose this or do you think it's a good idea? [LB866]

RICHARD HEDRICK: No, I thought we had all people for it first. [LB866]

SENATOR LATHROP: Yes. Yes. Yes, we did. [LB866]

RICHARD HEDRICK: Yeah. [LB866]

SENATOR LATHROP: Okay. Okay, very good. Thank you. I see no other questions. Anyone else here in support? Okay. Let's go to the opponents of LB866, if any. [LB866]

RON SEDLACEK: Chairman Lathrop and members of the Business and Labor Committee, for the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and Industry. And when I first reviewed the bill, although I didn't think of Catch-22, I thought immediately about the person who wanted to start...knew he needed to exercise and he remembered that he needed to go to the doctor for approval and the doctor says you can't do it until you get in better shape, and that's about what it seems to be, another...as mentioned, another Catch-22 in this regard. There are times this can be unfair, a policy such as this. There's no question about it. The Nebraska Chamber of Commerce does have a well-established position, however, that we would like to see the Nebraska law to mirror federal law when it comes to particularly issues in regard to a protected class, and that's essentially where our opposition lies. As Senator Lathrop mentioned, there are a number of protected classes and many of those are immutable traits or characteristics, except perhaps for religion. And that is...has been consistent with our policy. And although I understand very well the intent of the legislation, we also see some issues in regard to the, potentially, abuse of that. That has not been ironed out in the particular proposal itself and particularly on page 4 and 5 where it was mentioned that there is a defense for a bona fide occupational qualification. That's on the top of page 5, lines 2 and 3, a fairly high standard, not a lot of interpretation in this area at the present time. To answer the question in regard to the status, that's found on page 2, line 24, subdivision (5), where it says unemployed means a person's either present or past unemployment, regardless of the length of time the individual is unemployed. The question becomes, if you're self-employed, how does that work in this regard? Are you, you know...or can that be an argument? The other is also...but might not necessarily be a bona fide qualification, but let's assume for a moment that a person, administrative assistant, and

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has been out of the work force, perhaps raising a family for 20 years and applies for the job. And says, I, you know, I can do the work, and the employer says, you know, probably possibly but, you know, you've been out of the system for so darn long I'm not going to offer you this job but I'll offer you something else or, you know, let's start over. And you have a case right there because you've been denied employment because of your unemployment, being out of the work place. Doesn't say unemployment through your fault or, you know, or resigning voluntarily or whatever. So that is a legitimate concern we believe that should be addressed. [LB866]

SENATOR LATHROP: Okay. Thanks, Ron. Are there any questions for Mr. Sedlacek? Senator Harr. [LB866]

SENATOR HARR: So you're for discrimination? (Laugh) [LB866]

RON SEDLACEK: Of course not. [LB866]

SENATOR HARR: No. No, what I was going to say is...I'm just teasing. In that last instance, and I think Senator...the other Senator Haar covered that, is if there is a valid reason for that discrimination, for instance, if a skill has gone away,... [LB866]

ROD SEDLACEK: That's correct. [LB866]

SENATOR HARR: ...and I would argue if you're out of the work force there is an argument to be made that a skill does decline, other than...but, yeah. I make that argument. And so while they may make a claim with the department, I think it would more than likely be dismissed or at least that would be my hope and the intent with this bill. And that's all I have to say. Thanks. [LB866]

RON SEDLACEK: Uh-huh. [LB866]

SENATOR LATHROP: Senator Smith. [LB866]

SENATOR SMITH: Thank you, Senator Lathrop. You know, you weren't going down this particular path but it's interesting that...let's say someone who is unemployed because they've been out of the work force for a while, they are given a job but the job that they're given is well below their otherwise level of experience, so they become actually underemployed with this employer. If they are a protected class, I suppose one could also say that they could...you know, they could be opening up a door to say that I should have been given a higher wage level, a higher classification, but I was not because I was...there is this gap. So seems as if there's potentially an opportunity there to continue to head down this path of having... [LB866]

RON SEDLACEK: Well, yeah, but the bill actually, Senator, doesn't really go into that,

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that reason. It essentially says either you're...if you're unemployed and that's the basis of your decision, okay, not the level of the job but if you deny employment because of your unemployment status itself, you know. [LB866]

SENATOR SMITH: Yes. Thank you. [LB866]

SENATOR LATHROP: Senator Wallman. [LB866]

SENATOR WALLMAN: Thank you, Chairman. Yeah, my family employs quite a few people but one of the big things unemploymentwise, would you consider health, you know, a preexisting condition? Because you're going to look at that and that would probably be considered discrimination but, boy, I'll tell you what, we look at that. [LB866]

RON SEDLACEK: But, you know, there is a protected class and that's age, you know, it can be age. [LB866]

SENATOR WALLMAN: This isn't age. [LB866]

RON SEDLACEK: But there are limitations. This is not age, that's correct. [LB866]

SENATOR WALLMAN: Yeah. So it's a tough call. [LB866]

RON SEDLACEK: And disability as well. [LB866]

SENATOR LATHROP: Okay. I see no other questions. Thanks, Ron. [LB866]

RON SEDLACEK: Thank you. [LB866]

ROBERT HALLSTROM: (Exhibit 8) Chairman Lathrop and members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the National Federal of Independent Business to testify in opposition to LB866. Without either reading all of my testimony or being too repetitive, we do have concerns with regard to raising unemployed status to the level of a protected class. I think along the lines of Senator Smith's comments, another concern is the issue of how do you refute the claim that a person was or wasn't considered for a job? The mere fact is, if they weren't hired, there's the potential for them now to raise a claim based on the fact that they are or were unemployed. I think Senator Harr, double R, I would agree with you that the issue is that complaint may very well ultimately be dismissed, but nonetheless the level of risk is raised to the employer to have to go through the process, to hire an attorney perhaps, or to at least spend time of their own in trying to defend against the type of claims that we would see come up. For example, will they be subject to claims of discrimination by an applicant who happens to be unemployed but may not be the best person for the job? How do you refute that claim if

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they're not considered for...not hired but considered for the job? So those are all issues that I think are very disconcerting to us and we would oppose the bill. [LB866]

SENATOR LATHROP: Very good. Senator Harr. [LB866]

SENATOR HARR: You know, I will just say this: The burden is always on the plaintiff so it wouldn't be on the employer in that situation. Now we can disagree on a lot of the things but...or agree on a lot of the things, I think we do probably on this, but the burden always remains with the plaintiff. It doesn't go to the defendant. [LB866]

ROBERT HALLSTROM: Thank you. [LB866]

SENATOR LATHROP: Senator Smith. [LB866]

SENATOR SMITH: But to clarify in this exchange between you and Senator Harr, yes, the burden is on the plaintiff, but the defendant, in protecting its reputation, will employ the services of an attorney and rack up those expenses. [LB866]

ROBERT HALLSTROM: Yeah, I would certainly think, irrespective of what the burden of proof is, you're going to defend yourself and incur costs in doing so. [LB866]

SENATOR SMITH: Yeah, I think that's a point you were trying to make. [LB866]

ROBERT HALLSTROM: Yes. [LB866]

SENATOR SMITH: Right. Thank you. [LB866]

SENATOR LATHROP: Okay. Thanks, Bob. [LB866]

ROBERT HALLSTROM: Thank you. [LB866]

SENATOR LATHROP: Anyone else here in opposition? How about anyone here in the neutral capacity on LB866? [LB866]

BARBARA ALBERS: Good afternoon, Senators. I'm Barbara Albers, A-l-b-e-r-s. I'm the director of the Nebraska Equal Opportunity Commission. At our January 20 commission meeting last Friday, our commissioners discussed LB866 and requested that I come to the hearing and testify on behalf of the commission in a neutral capacity. As you are aware, our agency's state funding was decreased by 10 percent for this current biennial budget cycle. As a result, the agency eliminated two investigator positions. With the passage of LB866, the commission conservatively estimates an increase of 80 to 100 cases being filed per year. These additional cases would not be able to be absorbed by our current investigative staff and adding these cases to our workload would result in a

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longer time frame from filing to case completion. It would require the commission to add an investigator position to its staff. Additionally, the commission estimates that up to a fourth of these cases would proceed to public hearing, which is very costly, and so we project additional agency costs of over \$177,000. Since this is a basis that is not covered by any federal statute, our agency would not receive an increase in federal funds under our federal contracts to help support these additional charges, and the revenue that would be received through any civil penalty would not accrue to the commission in accordance with our state's constitution. I'd be happy to answer any questions. [LB866]

SENATOR LATHROP: Very good. Thank you, Ms. Albers. Any questions? I see none. We always appreciate hearing from you and are we getting along okay without those two people we... [LB866]

BARBARA ALBERS: Well, I raised my investigators' case goal so...which is helping, and we've realigned some job duties. Our backlog has grown a little bit but we're...I think we're doing fairly well. [LB866]

SENATOR LATHROP: Okay. Well, thanks for your work there. [LB866]

BARBARA ALBERS: But if we... [LB866]

SENATOR LATHROP: Thanks for your work there. We appreciate the... [LB866]

BARBARA ALBERS: Okay. [LB866]

SENATOR LATHROP: ...the fact that you had some of the staff taken from you in the LR542 process and... [LB866]

BARBARA ALBERS: All right, so... [LB866]

SENATOR LATHROP: ...thanks for what you do. Senator Wallman. [LB866]

SENATOR WALLMAN: Thank you, Chairman. Yeah, thanks for coming down. Do you see more problems about this unemployment, you know, continuously unemployable? [LB866]

BARBARA ALBERS: Well, certainly there are more people unemployed today than there were a few years ago. I think that if this legislation would be passed, we would have a lot of people filing. As I said, I think 80 to 100 is very conservative. Now some of those people might also be filing on another basis, which we would also then have federal coverage, but I think we would have a lot of people just filing on the basis of being unemployed. Because if you go in and apply for a job, unlike if you're already

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employed and something happens to you at work, you have a lot of information, but if you're just going in, you know, off the street and applying for a job you may not know why you're not being hired, but you do know that you're unemployed and that there's a statute out there. I'm not saying it's not a good idea, but if there's a statute out there, there are going to be a lot of people filing charges. And as I said, I think 80 to 100 is very conservative. So we may be back here asking for a lot more money. It's just hard, very hard to estimate because we don't track, really track any of this information as far as unemployed. [LB866]

SENATOR LATHROP: Very good. [LB866]

SENATOR WALLMAN: So we have a condition in Beatrice that, you know, a company went broke and they thought they had health insurance and now two of them have preexisting conditions and they absolutely can't get a job. And they went to the state. They can get, what, a COBRA insurance for a while, but it still they're way too young to keep that the rest of their days. So Department of Labor didn't...Insurance can't do anything about that, right? [LB866]

BARBARA ALBERS: Probably not, no. [LB866]

SENATOR WALLMAN: Thanks. [LB866]

BARBARA ALBERS: Yeah, because it's not illegal right now. Okay. Thank you. [LB866]

SENATOR LATHROP: Okay. Thank you. Anyone else here to testify in a neutral capacity? Seeing none, Senator Haar, you're good to close. [LB866]

SENATOR HAAR: Well, thanks for your time. Again, I think this law is very clear that it makes it unlawful to discriminate against someone simply because they are unemployed. And as pointed, did you get a copy of the letter from... [LB866]

SENATOR LATHROP: ACLU? [LB866]

SENATOR HAAR: ...Cathy Lang? [LB866]

SENATOR LATHROP: Oh. [LB866]

SENATOR HAAR: Because maybe if you didn't, I should send copies. [LB866]

SENATOR LATHROP: Yes. [LB866]

SENATOR HAAR: Okay. [LB866]

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SENATOR LATHROP: And I'll enter it into the record when you're done. [LB866]

SENATOR HAAR: Okay. Okay. But her letter is demonstrating the point that this simply extends the prohibitions against discrimination for unemployment because currently if you are unemployed and getting unemployment benefits, it's a misdemeanor to discriminate against that person for their unemployment. So it extends it, and I believe that this is worthwhile because at least I've been unemployed certain times of my life. It's very stressful. You may not think of carefully to quick go down and register for unemployment benefits just for this. So it extends it to everyone who's unemployed. [LB866]

SENATOR LATHROP: Very good. Thanks, Senator. [LB866]

SENATOR HAAR: You bet. [LB866]

SENATOR LATHROP: (Exhibits 9-10) Before we close the hearing, I will enter two letters into the record: a letter in support from the ACLU dated January 23, 2012; and a letter from Commissioner Lang dated January 23, 2012, which is offered in a neutral capacity. With that, we'll close the hearing on LB866 and move to LB911, which is my bill. [LB866]

SENATOR COOK: Welcome, Senator Lathrop. [LB911]

SENATOR LATHROP: Thank you, Vice Chair Cook and members of the Business and Labor Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm here to offer LB911. LB911 is a bill that simply amends state statute 48-622.02 to clarify that nonprofit businesses are eligible for job training programs funded by the Nebraska Training and Support Trust Fund. In the past, nonprofit businesses have been eligible for job training programs, but only if they partner with a for-profit business. However, it has been brought to our attention that some nonprofits have recently been recipients of these funds. As a result, I was asked to introduce LB911 to provide clarification on this issue. There will be a couple of testifiers following me who are in support of the bill and will tell you why they believe the change in state law needs to be made. And just to get off script for a minute, you'll see in the bill that it really, literally adds two words to the job training bill and just clarifies that not only do businesses that are for profit qualify for this job training fund but so too will nonprofits. With that, I'll entertain any questions. Seeing none, I'll turn it over to those in support. Thank you. [LB911]

NANCY THOMPSON: Good afternoon. My name is Nancy Thompson, N-a-n-c-y T-h-o-m-p-s-o-n. My address is 9406 Bayberry Court, La Vista, Nebraska. Prior to being a state senator, I was a nonprofit director, and after leaving I was a nonprofit director. And a couple years ago I was visited by the Department of Labor encouraging us to...the nonprofit I worked for at the time to partner and access job training funds. And I

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know all of you are great supporters of nonprofits in your community and the nonprofit I work for I think half of the members of the committee were donors to. So I know that you know nonprofits are very careful with the money that they spend, their donor money, and they do wonderful things in the community. I currently work for the nonprofit association that works with Nebraska's community health centers. They have lots of partners in their communities. And all this time I assumed it was a statutory thing that prohibited us from partnering. And I did look at it several times to try to find a partner for the nonprofit I work for that was not eligible, I thought, for this fund. And so it's just something that's been in the back of mind. Had the opportunity to share that with Senator Lathrop and he was kind enough to introduce the bill. Since, I found out since that time they have done some nonprofits, so apparently trying to profit...to partner was just a very complicated grant process to do. And so it's for that reason that I come in support of the bill and my association supports that bill. Be happy to answer any questions. [LB911]

SENATOR COOK: Oh, Senator Smith. [LB911]

SENATOR SMITH: Thank you, Senator Cook. Nancy, it's good to see you here... [LB911]

NANCY THOMPSON: Nice to see you too. [LB911]

SENATOR SMITH: ...and thanks for your service in the State Legislature... [LB911]

NANCY THOMPSON: I appreciate that. [LB911]

SENATOR SMITH: ...in the past and in your nonprofit area now. And you did a fantastic job at representing, I might say, the best district... [LB911]

SENATOR COOK: Second. [LB911]

SENATOR SMITH: ...of the 49 districts in the state. [LB911]

NANCY THOMPSON: You've got it. Appreciate that. [LB911]

SENATOR SMITH: But I'm just trying to think in my mind how some might see to oppose this legislation. I think it's really a good effort. But if there...should there be some type of a distinction between privately generated and publicly funded monies in a nonprofit that would go to pay the compensation for this person that is employed? I mean can you see is there a potential there? [LB911]

NANCY THOMPSON: Could you just restate that? I'm trying to...are you saying if they were...got government funds for part of their position? [LB911]

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SENATOR SMITH: Yes. Should that be an issue of consideration? [LB911]

NANCY THOMPSON: Well, I think probably a lot of the businesses have benefited from the support of the Legislature, whether they don't pay taxes because they were exempted for some of their purchases or perhaps they're taking advantage of certain funds in the state that are available for them in other ways. And you know, one of the things that I...you know, I served on Appropriations so I always felt that anything...and the Legislature has lots of funds that nonprofits take advantage of, but they're a partner to government and they're part of your bottom line. The more effective we are, whether it's in the healthcare sector, we worked with vulnerable children my previous job, those all benefit government's bottom line. People are healthier. When people are successful, that just makes your work less. [LB911]

SENATOR SMITH: Good answer. Thank you. [LB911]

NANCY THOMPSON: You bet. [LB911]

SENATOR COOK: Senator Carlson. [LB911]

SENATOR CARLSON: Thank you, Senator Cook. Something is prompting me to ask you this question. Because of the way that we set up our hearings, we have proponents and then the opponents, and so if there's opposition that comes up and you already testified, you have no way of countering that. [LB911]

NANCY THOMPSON: I know. [LB911]

SENATOR CARLSON: What do you see as possible opposition to this bill and what would your response be to the opposition? [LB911]

NANCY THOMPSON: You know, I tried to think about that. I suppose the way this operates is, you know, the Legislature passes a law and the department sets up the processes for doing it. There may be people who I suppose could feel crowded out, but this is a pretty small...you have to have a 50 percent match as they currently operate it. So, you know, it looks to me, from the people who have been awarded to it, that it tends to be smaller organizations that take advantage of this fund, but that's just my opinion. I don't know if...I doubt that the Department of Labor would have been rolling this out to encourage people to apply if they felt that it was a crowded out fund already. I got the impression that perhaps it wasn't all being expended. [LB911]

SENATOR CARLSON: Okay. You don't see a glaring opposition that would probably pop up? I guess if it is, I can ask that later. [LB911]

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NANCY THOMPSON: Well, we cleared the room. (Laughter) And, you know, I'm happy that the Chamber of Commerce isn't testifying neutral. So, you know, I don't...I'm anxious to hear if anyone does have an objection to that. I think, you know, there are lots of funds that the Legislature has set up. You know, we use the cigarette tax to support state parks. We use lots of taxes for lots of different purposes. And you know, nonprofits struggle to do the good work in your communities. It's just a small thing that helps them get job training money and training funds are always the first thing to go, to be quite honest with you, with the most nonprofits I've worked with because you're directing...you are providing direct services. And having your employees trained, your managers trained is all critical to the efficiency that you have, and to me that's a good government purpose. [LB911]

SENATOR CARLSON: Okay. Thank you. [LB911]

NANCY THOMPSON: You bet. [LB911]

SENATOR COOK: Are there other questions for Senator Thompson? [LB911]

NANCY THOMPSON: Thank you. [LB911]

SENATOR COOK: Thank you very much. Next testifier in support of LB911. [LB911]

ANNE HINDERY: (Exhibit 11) Good afternoon. My name is Anne Hindery and I'm with the Nonprofit Association of the Midlands. We're a state association that deals only with nonprofits to promote a stronger sector in Nebraska through public policy, affordable products and services, organizational development, research, information sharing, and network building. We have more than 200 members across the state and we work to strengthen, support and be the voice for nonprofit corporations in the sector. Nonprofit corporations or businesses come in all different shapes and sizes, from art and cultural organizations to education, environmental groups, health and human services agencies, youth service agencies. Nonprofits are critical to Nebraska's good life. The quality of life we have in this state is an important reason that businesses thrive and families come to raise their children. The qualities people treasure in this region are due in large part to the mission and work of nonprofit organizations. The nonprofits not only keep our quality of life high. We also employ 9 percent of our state's work force, employing more than 85,000 employees in Nebraska alone. In order to attract and retain quality employees and improve service delivery for clients, training is a key element for any job and critical for smaller nonprofits. In today's economy, resources available to nonprofits, especially in job training, are hard to find. This bill would also ensure the professional, quality training that built the capacity of the sector. All areas of nonprofits of Nebraska's work force need job training funds to ensure a strong work force. This bill would broaden who has access to apply for these training funds and help nonprofits better serve their community. On behalf of my board of directors who have endorsed this bill, LB911, I

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urge positive action, and thank you for your time and would take any questions. [LB911]

SENATOR COOK: Thank you, Ms. Hindery. Are there questions from members of the committee? Seeing none, thank you very much. [LB911]

ANNE HINDERY: Okay. Thank you. [LB911]

SENATOR COOK: Next testifier in support of LB911. Is there anyone to testify in opposition to LB911 today? Anyone testifying in a neutral capacity? Seeing none, Senator Lathrop, would you like to close? [LB911]

SENATOR LATHROP: Yes, just briefly. I should probably leave well enough alone since there was no opposition or no one in a neutral capacity, but two points I'd like to make. One is there's no prohibition in the statute right now. It just seems by way of practice that the nonprofits have had to partner with a for profit and that really is unnecessary. The second point I would make is that it's a competitive process, right, so a lot of people put in their requests into this fund and there is a board, as I recall, that looks through them and decides the grants, who's going to get the money and for what purpose. And so the nonprofits aren't coming in and squeezing out the for profits or the businesses in Nebraska. They're just getting a ticket to come to the process and their programs and their grants will be evaluated on a competitive basis, and I think that's our assurance that this is a good idea. And if it makes perfect sense to allow a nonprofit to benefit from this fund, I think that's good policy. And with that, I'll stop. [LB911]

SENATOR COOK: All right. Thank you very much, Senator. [LB911]

SENATOR LATHROP: Okay. [LB911]

SENATOR COOK: (Exhibit 12) I have a letter that I'd like to read into the record, or the receipt of a letter, from the Department of Labor, state of Nebraska. Commissioner Cathy Lang has a letter in neutral testimony to LB911. Seeing no other requests for input, I would close out the hearing for LB911 and the committee hearings for the day. [LB911]